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June 20, 2014

Kent L. Jones, P.E.
State Engineer
Utah Division of Water Rights
1594 West North Temple Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

Via Email (KentLJones@utah.gov)

Re: Water Storage in Three Creeks Reservoir in 2014

Dear Mr. Jones:

Our client, Kents Lake Reservoir Company (Kents Lake), responds to the inaccurate claims made by Rocky Ford Irrigation (Rocky Ford) in their letter dated June 11, 2014. Kents Lake is made up of numerous shareholders who are hard working farmers and ranchers in the Beaver area. In addition, Beaver City is a major shareholder and owns 200 acre-feet of storage in Upper and Middle Kents Lake reservoirs. Kents Lake owns, operates and maintains three reservoirs in the headwaters of the Beaver River. The water provided from these reservoirs is very important to the individual shareholders and the local economy. The water is even more significant to Kents Lake at this time of the irrigation season. It is not feasible or fair to put a hold on the storage water. Kents Lake shareholders have been planning and are now relying on the water for immediate crop production.

As a preliminary matter, Kents Lake disagrees that storage in Three Creeks has somehow blossomed into a full-on emergency requiring drastic findings of distribution order violations and emergency storage releases. Kents Lake stored water under full direction from the river commissioner with no communication storage was improper or should be otherwise curtailed.

Kents Lake also notes and appreciates the hard work of the state engineer's office over the years to distribute water on the Beaver River in face of the contentious ongoing water right disputes. These disputes include significant issues

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impacting the Interim Distribution Order ("IDO") recently raised in litigation by Rocky Ford (*Rocky Ford Irrigation Company v. Kents Lake Reservoir Company*, Beaver County Civil No. 100500156).

In summary, Kents Lake is not in violation of the IDO as implemented for the reasons set forth in this letter. Rocky Ford's request for a release order should respectfully be declined. At this time, the issues highlighted by the IDO regarding storage in Three Creeks Reservoir under the direct flow change applications should be adjudicated in the pending litigation before the state engineer fully addresses the IDO. A court will determine the priorities and storage water rights of Kents Lake and Rocky Ford by taking into consideration all the circumstances, including the 1953 Memorandum Agreement and the subsequent 60-year history of water right administration and water use. At the same time, we are confident Kents Lake, Rocky Ford, the state engineer and other interested parties want finality, the sooner the better. While litigation may help achieve finality, in my idealistic opinion, there are enough bright people involved in this matter such that creative and workable solutions could be explored, if each client agrees to explore, while at the same time being prepared for trial by December 15th.

In 2014 Kents Lake diverted and stored about 1157 acre-feet of water from tributaries that flow into Three Creeks Reservoir. In Kents Lake's opinion, this water was stored under the direct supervision of the Beaver River Commissioner and in harmony with the IDO. Kents Lake has several water rights under which water is diverted and stored in the three reservoirs. The Beaver River gage at the mouth of the canyon reached flows of 161 cfs or more (adjusted for the water diverted to storage) for a number of days in mid to late May and the flow was above 120 cfs for about 4 weeks during May and early June. During this same period of time the direct flow water rights below Patterson Dam were determined to be fully satisfied by the River Commissioner based on measurements provided by the new measuring devices installed.

In examining the available stream flow, diversion and storage records currently available for the Beaver River Distribution System for the 2014 Distribution Year they indicate Kents Lake diverted and stored water in Three Creeks Reservoir from about May 5 through the first few days of June. We realize these records are not complete and have not been reviewed and verified by your staff and thus they should be used with caution. For example, there was a problem with the transducer on Three Creeks Reservoir that measures the reservoir level which was not fully operational until about May 20. But under Kents Lake's analysis of the available records for the Beaver River Distribution System, we believe it is very clear the water diverted and stored by Kents Lake in Three Creeks Reservoir was legal and lawful.

Rocky Ford has not submitted any evidence that the diversions and storage was done in violation of the IDO or the water rights of record. In addition, Rocky Ford has not presented credible evidence that the storage of water in Three Creeks Reservoir results in impairment of their water rights.

Water diverted to storage by Kents Lake was made only when directed by the River Commissioner. It appears the River Commissioner made a determination that the hydrologic conditions set forth in the IDO were met and the diversion of water to storage could be made. After reviewing the available data, Kents Lake believes Rocky Ford does not have evidence to substantiate their claims that Kents Lake stored water illegally. Even if a determination is made that water was stored out of priority by Kents Lake, we do not agree that it would automatically be released to Rocky Ford or other water rights below Patterson Dam. Their argument that the water should be released and delivered to the water rights below Patterson Dam is without merit. If any releases were made the water would most likely need to go to the direct flow water rights above Patterson Dam.

Kents Lake knows you and your engineers are working hard to understand the water rights on the Beaver River and to properly distribute the water according to the water rights of record. We realize the workload of the Division and the many demands that are placed on you and your staff's time and limited resources. As you know Kents Lake does not agree with all of the provisions of the IDO, but Kents Lake remains committed to work with your office to address issues and make corrections where necessary. At the end of the water use year we plan to submit comments to provide the State Engineer with our prospective of how things went with the IDO for 2014 along with any suggestions or concerns we might have.

Regarding the administrative proceedings conducted with respect to the IDO, I believe all parties desire certainty and clarity from the state engineer about the specific actions and procedures contemplated as the implementation of IDO moves forward. In addition, the state engineer's position as to how the IDO proceeding will or will not move forward in light of the pending litigation is necessary. Water users in some distribution matters do not have a defined or effective administrative process in which to address their concerns. The potential actions of the State Engineer in the distribution of the limited water resources of the Beaver River have significant consequences and greatly affect the livelihood of many individuals on the system. Kents Lake strongly urges the State Engineer to examine how the IDO is being addressed and provide a forum where concerns can be raised, and if there are meaningful disagreements, rights of reconsideration and judicial review should be afforded. I believe the process proposed by counsel for Rocky Ford in Section II of its June 11th letter should be considered and discussed among representatives of at

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least the state engineer, Rocky Ford and Kents Lake. We support good faith efforts to come to agreement on the procedural aspects.

In conclusion, as Kents Lake reviews the preliminary water distribution records available for the Beaver River, we believe the water diverted to storage in Three Creeks Reservoir was legally and lawfully diverted under the established water rights of Kents Lake and in accordance with the IDO. All such water was diverted and stored under the direction and supervision of the Beaver River Commissioner. Kents Lake should not be prohibited from using their water stored in Three Creeks Reservoir.

Thank you again for the office's hard work in distributing the water on the Beaver River system. Please don't hesitate to contact us if you have questions or need further information.

Sincerely,

MABEY WRIGHT & JAMES, PLLC



John H. Mabey, Jr.

Cc via email: Kents Lake Reservoir Company
Jared Manning, P.E.
Justin Wayment, attorney for Beaver City
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